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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Review of the Commission's Rules
regarding the main studio and
local public inspection files of
broadcast television and radio stations

47 C.F.R. §§ 73.1125,
73.3526 and 73.3527

MM Docket No. 97-138

COMMENTS OF ABC, INC.

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To: The Commission

COMMENTS OF ABC, INC.

ABC, Inc. ("ABC") submits herewith its Comments in response to the Commission's request for comment on the Commission's rules regarding the main studio and local public inspection files of broadcast television and radio stations, 47 C.F.R. §§ 73.1125, 73.3526 and 73.3527.¹ ABC, either directly or through subsidiaries, owns and operates ten television broadcast stations and 22 radio stations, and recently received Commission authorization to purchase four more radio stations in markets in which it has existing radio stations.

¹ MM Docket No. 97-138, Report No. FCC 97-182 (released May 28, 1997).

Introduction and Summary

In proposing a relaxation of the main studio and public inspection file rules, the Commission in this docket has announced dual goals: ensuring that broadcasters serve the interests of their communities while avoiding unnecessarily rigid or restrictive regulatory burdens on licensees. (NPRM ¶ 1.) ABC recognizes the importance of both these goals. Moreover, it agrees with the Commission that the current main studio rule (already relaxed in 1987) still unduly prescribes the manner in which broadcasters fulfill their community service obligations and thereby imposes excessive regulatory burdens on licensees. (NPRM ¶ 8.) In our view, however, none of the proposals for further relaxing the main studio rule will satisfy the Commission's goals. The proposed alternative formulations are either too restrictive or so vague that they will be difficult to interpret and enforce.

We believe that the best way of accommodating the Commission's goals is not to rewrite the main studio rule but to eliminate it, as the Commission wisely proposed ten years ago in its 1987 notice of proposed rulemaking. Instead of advancing the goal of community service, the main studio rule -- even in its more lenient alternative formulations -- unnecessarily dictates to broadcasters how best to serve their communities and in the process unduly interferes with broadcasters' discretion. At the same time, the rule limits licensees' ability to realize the economies of scale made possible by relaxed ownership limits and to conserve resources better put to use in increased public service programming and community service rather than simply maintaining an office and a skeleton staff in a particular location.

If the Commission declines to use this opportunity to repeal the main studio rule, we propose

at a minimum that it significantly relax the rule by providing several clearly defined and substantially more liberal alternative methods whereby stations can comply. A station should be given a choice of locating its studio within that station's principal community contour, within the principal community contour of other mutually overlapping co-owned stations, or within a radius of 50 miles from the city limits of the station's community of license.

We support the Commission's proposal that it amend the public inspection file location rule to permit stations to locate their station public inspection files at their main studios, wherever those studios are located. We believe this is the logical place for a station's files as it permits stations better to monitor the upkeep and maintenance of the files and to be responsive to concerns raised by community members who may visit the files.

Argument

I. The Main Studio Rule Should be Repealed Because It Imposes Undue Regulatory Burdens on Licensees without a Corresponding Public Interest Benefit.

As the Commission recognizes, the main studio rule (47 C.F.R. 73.1125), despite its worthy objective, "can impose substantial burdens on the licensee, depriving it of savings that could be put to more productive use for the benefit of the community served by the station." (NPRM ¶ 8.) In addition, these burdens can be "inconsistent with the economies of scale that can be achieved through common ownership of stations that Congress implicitly found to be in the public interest in relaxing the local radio ownership rules in the 1996 Act." (*Id.*) With local radio ownership limits liberalized by the 1996 Telecommunications Act to permit stations to own as many as eight radio

stations in a single market, companies are attempting to achieve market efficiencies by buying additional radio stations in markets in which they already own some. Such efficiencies are best achieved through collocation of physical studio facilities as well as operational functions. In many cases, however, the stations being purchased are in towns and cities that -- while near the company's existing stations -- do not provide a principal community or city-grade contour coverage over the old stations' offices and studios. Indeed, the new stations may not fall within any of the other proposed formulations of an acceptable main studio location advanced in this proceeding. As a result many station group owners are being faced with creating several main studios for stations in the same or overlapping markets at a substantial cost in duplicative rent, utilities and staff.²

The following example is illustrative. ABC, through a wholly owned indirect subsidiary called KQRS, Inc., owns three radio stations in the greater Minneapolis area: one FM station licensed to Minneapolis, and one AM and one FM station licensed to the Minneapolis suburb of Golden Valley, Minnesota. The offices and main studios for those three stations are co-located in Golden Valley, which is within the principal community contours of all three of these existing KQRS, Inc. stations. Recently the Commission approved KQRS, Inc.'s purchase of three small FM stations located in various Minneapolis exurbs that together, through simulcast programming at 105.1, 105.3 and 105.7 Mhz, provide programming to a moderate portion of the Minneapolis market. One of those three stations is located in Cambridge, Minnesota, about 42 miles north of Golden

² Such consolidation and efficiency arguments are less pertinent to television than radio stations as long as television duopoly rules remain in place. Television stations may therefore take less advantage than radio stations of increased flexibility in locating their main studios. However, the policy arguments made below for according broadcasters maximum latitude in selecting their office and studio sites apply equally to both radio and television.

Valley; one is located in Lakeville, Minnesota, a Minneapolis suburb about 22 miles south-southeast of Golden Valley; and the third is located in Eden Prairie, about nine miles southwest of Golden Valley. Because each of these three stations individually has a very modest coverage area, only one of them -- the Eden Prairie station -- provides a city-grade signal coverage over the company's current main studio in Golden Valley and is thus permitted under the current main studio rule to locate its main studio in Golden Valley. Under the Commission's current main studio rule, and even under the alternative proposals, ABC will be required to create two new main studios, one for the Lakeville station and one for the Cambridge station, at an annual cost of some \$160,000 in rent and salaries, plus electricity, phone and water bills and other costs, to create an on-site presence for two small, relatively low-power stations near Golden Valley that provide the same programming as their Eden Prairie sister station only 18 to 50 miles away.

In our view such duplicative expenses do little to serve the community service purpose for which the main studio rule was designed. Dictating where broadcasters locate their main studios and how they staff them is unnecessary to assure that broadcasters are responsive to their communities' needs and in many cases can be counter-productive. In its 1987 Report and Order adopting the current version of the main studio rule, the Commission stated that each main studio must include a "meaningful management and staff presence" to ensure that each station receives "exposure to daily community activities and other local media" that helps them "identify community needs and interests" and thereby to meet their community service requirements. (Report and Order in MM Docket No. 86-406, 2 F.C.C. Rcd. 3215, 62 R.R.2d 1582, 1586 ¶ 36.) A 1992 Commission decision (Jones Eastern of the Outer Banks, Inc., 7 F.C.C. Rcd. 6800, 71 R.R.2d 912, 913-14) provided that "meaningful management and staff presence" means the equivalent of at least one full-time manager

(who may be an engineer, personnel or facilities manager, controller or accountant, not necessarily a person with programming, news or community affairs expertise) who reports to work daily at that studio and spends a substantial amount of time there, and one full-time staff member. The manager's presence is presumably designed to enable the station to obtain exposure to daily community activities and other local media and to identify and respond to community needs and interests, and the full-time staff member's presence is intended to help keep the office running and to be sure someone is there during normal office hours to answer the phone and open the door for members of the public who may call or come by.

These presence requirements are not the only or even the best way to ensure that stations learn about the needs and interests of their communities of license. Stations with studios outside their communities of license already have executive, programming, news and/or community affairs personnel out in the communities virtually every day. Station managers, program directors, reporters, on-air talent, and community affairs directors regularly travel from their studios to their communities of license and to other local communities in their coverage areas to attend community events, meet with local politicians, businessmen and community representatives, inform themselves about local politics, raise money for local causes, interview local public figures and residents, and report on events and issues of interest to their communities. There is no reason to expect that the main studio rule -- in its current or any future incarnation -- is necessary for stations to continue these traditional public interest activities.

As for the audience accessibility function of a main studio, listeners and community representatives rarely stop by at the stations to voice their views. As the Commission recognized when it relaxed the main studio rule ten years ago, local residents who wish to communicate with

a radio station (or for that matter with any business) almost always do so by picking up a phone to speak to the station, mailing or faxing a letter, or -- in this information age -- sending an E-mail, any of which is far more convenient than driving or taking public transportation to a business even a few miles away from one's home or office, and none of which is dependent on locale. (Report and Order in MM Docket No. 86-406, 2 F.C.C. Rcd. 3215, 3218 (1987).) Those individuals who do want a face-to-face meeting with a station representative typically set up a mutually convenient time and place for an appointment rather than just dropping in. This can easily be arranged whether or not a station has a main studio within its principal community contour or within any predefined driving or mileage distance from its community of license.

To the extent that there is thought to be a need for regulation to ensure community accessibility and responsiveness, rules other than the main studio rule already guarantee that broadcasters will be accessible to their communities of license and will serve those communities' local needs and interests. The rules require that each station have a local or toll-free number so that residents of the station's community of license can reach the station by phone without incurring long-distance charges. (47 C.F.R. 73.1125(c).) They require that stations maintain a public inspection file so that members of the public can view documents pertaining to their community service. (47 C.F.R. 73.3526.) They require that stations place in those files every quarter a list of the issues of concern to their local communities and the local news and public affairs programming and other community service efforts through which they have addressed those issues. (47 C.F.R. 73.3526(a)(8)(i), 73.3526(a)(9).) They provide a license renewal application process that includes pre-filing and post-filing announcements and procedures whereby community members who believe a station has not adequately addressed the needs of the community during its license term can

challenge the licensee's right to renewal. (47 C.F.R. 73.3580(d)(4), 73.3584 and 73.3587.)

The Commission has decided in a number of other contexts that so long as broadcasters fulfill their obligations to serve the needs and interests of the community, the Commission does not have to dictate the methodology by which they do so. In its 1981 radio deregulation order, the Commission eliminated the requirements that stations engage in formal community needs ascertainment to determine the issues of concern to their communities; that they keep logs of all their programming; that they limit commercials to a set number of minutes per hour; and that they present predetermined percentages of news and public affairs programming. (Deregulation of Radio, 84 F.C.C.2d 968, recons. denied in part, 87 F.C.C.2d 797 (1981), aff'd in relevant part, Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413 (D.C. Cir. 1983).) Six years later, the Commission -- recognizing again that stations could serve their local communities in a variety of ways -- relaxed the main studio rule to allow stations to locate their studios outside their communities of licenses as long as they were inside their principal community contour and to eliminate the requirement that stations originate any set proportion of their programming from their so-called "main studios." (Report and Order in MM Docket No. 86-406, 2 F.C.C. Rcd. 3215, at ¶¶ 39-47 (1987).) Underlying all these deregulatory efforts is the view that broadcasters should be held accountable for results, not told what means to use to achieve those results, and that broadcasters' good judgment, combined with the public interest obligations imposed on them by law, their accountability in the license renewal and challenge process, and the dictates of the marketplace, are adequate to assure that the stations inform themselves about the communities' needs and respond to those needs with appropriate programming and service. (Deregulation of Radio, 84 F.C.C.2d 968, 1013-14.)

Perpetuating the main studio rule, even in a further amended form, is inconsistent with the spirit of these deregulatory initiatives. Broadcasters can and should be given broad latitude to determine how best to fulfill their obligations to their communities of license and service areas. Prescribing where they should locate their offices and how they should staff them elevates form over substance and thereby undermines the very goals it is designed to serve.

- II. If the Commission Decides to Retain the Main Studio Rule in Some Form, It Should Relax the Rule To Permit Stations to Locate Their Main Studios Within Any of the Following Parameters, at the Stations' Discretion:
(a) Within Their Own Principal Community Contour; (b) Within the Principal Community Contours of any Mutually Overlapping Co-Owned Stations, or (c) Within 50 Miles of the Borders of Their Cities of License.

If the Commission decides to retain the main studio rule in some form, we agree with the Commission's inclination to favor a formulation that can be clearly and easily understood and applied. (NPRM ¶ 14.) However, we also believe that any reformulation of the rule should give stations significantly more latitude than they currently enjoy in selecting the location for their main studios. One good way of achieving this objective is to offer stations the choice of locating their main studio at any one of the following locations: within their principal community contour; within the principal community contours of any mutually overlapping co-owned stations³; or within 50 miles from the border of their community of license.⁴ A station with offices 50 miles or less from

³ We understand this Commission proposal to mean that if a company owns radio stations A, B and C, and if A's principal community contour overlaps with B's and B's overlaps with C's, it would be acceptable to locate A's studio within C's principal community contour or vice versa, even though A's and C's contours do not overlap.

⁴ We believe a mileage standard should use the city borders rather than city center as a reference point because the rules have always focused on a city of license as a whole rather than on

its community of license or co-owned with other stations in the immediate vicinity that have overlapping principal community contours can easily comply with its obligation to inform itself about local community needs and interests and to serve those needs and interests with appropriate programming and public service.

Many of the alternative main studio rule proposals advanced by the petitioners and the Commission appear to us unclear, complicated, or unduly restrictive. As the Commission recognizes, the “reasonably accessible” standard and the case-by-case waiver approach are too vague to give broadcasters sufficient guidance in locating their studios and would create substantial administrative burdens on Commission staff charged with resolving disputes or waiver requests. (NPRM ¶¶ 12-13.) The “thirty minutes’ normal driving distance” standard (NPRM ¶ 12) is also vague (30 minutes in good traffic or bad? sometimes or most of the time? during rush hour or in mid-day?) and rules out some situations in which a main studio can be reasonably accessible to a community of license even though it may take more than half an hour to drive there. And the proposal that a station be permitted to locate its main studio within either its own principal community contour or within the principal community contour of any other station licensed to the same community (NPRM ¶ 14) suffers from several defects. First, for many stations, this proposed rule offers little if any added flexibility, because many small stations currently being purchased by group owners were established under the “drop-in docket” (Docket No. 80-90) as the only station licensed to serve their particular community. Second, for stations that do have competitors licensed

its city center and have treated any location within the city as equally acceptable. We believe 50 miles is reasonable because many people travel that distance to work, shop, dine, attend cultural events, meet business contacts, or visit acquaintances, and reporters often travel further than that to seek out and report local news.

to the same community, the rule is complicated to interpret and administer in that it requires obtaining and comparing contour maps of stations owned by other media entities. Finally, for a station locating its studio within the principal community contour of another station that subsequently moves or shuts down, the rule could create a hardship unless the affected station's location were grandfathered.

III. The Public Inspection File Rule Should be Changed
To Require that the File be Kept in the Station's
Main Studio, Wherever that Studio Is Located.

We endorse the Commission's proposal (NPRM ¶ 20) to amend the public inspection file location rule (47 C.F.R. 73.3526(d)) to permit stations to locate their local public inspection files at their main studios, wherever located. We believe that this is the most logical location for a station's public inspection file, for several reasons. First, most members of the public who go looking for a station's files automatically assume that those files are kept in the station's offices and simply consult a phone book to find out the address. Second, if the files are kept in a library or lawyer's office in another city, it is more difficult for the station to ensure that the files are kept complete, accurate, well-organized and up to date; that any documents inspected or removed are properly replaced; and that members of the public who come to look at the public file are accommodated in accordance with FCC law. Third, having public inspection file visits occur at the station's offices keeps station staff aware of and responsive to areas of community interest and allows them to answer any additional questions that visitors inspecting the file may have.

We recognize that eliminating the main studio rule or giving stations significantly more latitude in locating their main studios while also allowing them to maintain their public inspection

files in their main studios could result in a potential inconvenience to some members of the public who live at a significant distance from the main studio and seek access to documents in the public file. We believe that at the outset the Commission should rely on stations' self-interest and dedication to community service voluntarily to find ways to accommodate this limited number of listeners and viewers. There are any number of methods stations could use. If a public file request is for a discrete document or group of documents, the station could send copies of the documents to those requesting them by mail, E-mail, overnight mail, or fax. Depending upon the level of interest in examining the public file, a station could provide transportation to particular individuals, post documents on a web site, or maintain a duplicate public inspection file in its city of license. Our experience is that public file access is rarely sought. Therefore, we believe it is unlikely that the public will be harmed by leaving it to stations' discretion in the first instance to devise the best way to accommodate public file requests from members of the public for whom distance from the main studio is a major inconvenience. The Commission can revisit this issue if our prediction turns out to be unrealistically optimistic.

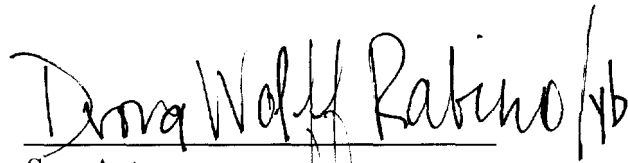
In any event, we urge the Commission not to let the tail wag the dog. The issue of public file access should not stand in the way of eliminating or substantially liberalizing the main studio rule. Any concern about public file accessibility by members of the public at significant distances from the main studio can be addressed through the voluntary measures outlined above or, if the Commission deems necessary, by making such measures mandatory, without restricting the location of radio stations' offices, studios and staff.

Conclusion

For the reasons set forth above, ABC, Inc. respectfully submits: (a) that the main studio rule should be repealed or, at a minimum, significantly relaxed in a way that permits stations a variety of clear alternative methods for complying, and (b) that the public inspection file location rule should be amended to permit stations to locate their public inspection files in their main studios, wherever those studios are located.

Respectfully submitted,

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